No. 18-389

In the Supreme Court of the United States

PARKER DRILLING MANAGEMENT SERVICES, LTD.,

Petitioner,

v.

BRIAN NEWTON,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

JOINT APPENDIX

DAVID C. FREDERICK
Counsel of Record
KELLOG, HANSEN, TODD, FIGEL & FREDERICK
1615 M Street, NW
Suite 400
Washington, DC 20036
(202) 326-7900
dfrederick@kellogghansen.com
Counsel for Respondent

PAUL D. CLEMENT
Counsel of Record
GEORGE W. HICKS, JR.
MICHAEL D. LIEBERMAN
KIRKLAND & ELLIS LLP
655 Fifteenth Street, NW
Washington, DC 20005
(202) 879-5000
paul.clement@kirkland.com
Counsel for Petitioner

February 20, 2019

Petition for Writ of Certiorari Filed September 24, 2018
Petition for Writ of Certiorari Granted January 11, 2019

TABLE OF CONTENTS

Relevant Docket Entries, United States Court of Appeals for the Ninth Circuit, *Newton v. Parker Drilling Mgmt. Servs., Ltd.*, No. 15-56352 ..... JA-1

Relevant Docket Entries, United States District Court for the Central District of California, *Newton v. Parker Drilling Mgmt. Servs., Ltd.*, No. 2:15-cv-02517 ..... JA-7

First Amended Complaint, United States District Court for the Central District of California, *Newton v. Parker Drilling Mgmt. Servs., Ltd.*, No. 2:15-cv-02517 (Mar. 23, 2015) JA-15

Answer to Plaintiff's First Amended Complaint, United States District Court for the Central District of California, *Newton v. Parker Drilling Mgmt. Servs., Ltd.*, No. 2:15-cv-02517 (Apr. 3, 2015) JA-36

The following opinions, decisions, judgments, and orders have been omitted in printing this joint appendix because they appear on the following page in the appendix to the Petition for Certiorari:

Appendix A

Opinion, United States Court of Appeals for the Ninth Circuit, *Newton v. Parker Drilling Mgmt. Servs. Ltd.*, No. 15-56352 (Feb. 5, 2018) Pet.App-1

Appendix B

Order, United States Court of Appeals for the Ninth Circuit, *Newton v. Parker Drilling Mgmt. Servs. Ltd.*, No. 15-56352 (Apr. 27, 2018) Pet.App-42

Appendix C

Order, United States Court of Appeals for the Ninth Circuit, *Newton v. Parker Drilling Mgmt. Servs. Ltd.*, No. 15-56352 (May 16, 2018) Pet.App-44

Appendix D

In Chambers Order, United States District Court for the Central District of California, *Newton v. Parker Drilling Mgmt. Servs., Inc.*, No. 15-cv-02517-RGK-AGR (Aug. 10, 2015) Pet.App-46

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 15-56352

BRIAN NEWTON, an individual,

Plaintiff-Appellant,

v.

PARKER DRILLING MANAGEMENT SERVICES, LTD., Erroneously Sued As Parker Drilling Management Services, Inc.,

Defendant-Appellee,

AND

PARKER DRILLING MANAGEMENT SERVICES, INC., a Nevada Corporation,

Defendant.

RELEVANT DOCKET ENTRIES

Date Filed	#	Docket Text
09/03/2015	1	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. SEND MQ: Yes. The schedule is set as follows: Mediation Questionnaire due on 09/10/2015. Transcript ordered by 10/05/2015. Transcript due 01/04/2016. Appellant Brian Newton opening brief due 02/16/2016. Appellee Parker

Date Filed	#	Docket Text
		Drilling Management Services, Ltd. answering brief due 03/17/2016. Appellant's optional reply brief is due 14 days after service of the answering brief. [9672080] (JN) [Entered: 09/03/2015 04:33 PM]
		* * *
03/17/2016	7	Submitted (ECF) Opening Brief for review. Submitted by Appellant Brian Newton. Date of service: 03/17/2016. [9906386] [15-56352] (Strauss, Michael) [Entered: 03/17/2016 07:25 PM]
03/17/2016	8	Submitted (ECF) excerpts of record. Submitted by Appellant Brian Newton. Date of service: 03/17/2016. [9906388] [15-56352] (Strauss, Michael) [Entered: 03/17/2016 07:30 PM]
		* * *
08/30/2016	20	Submitted (ECF) Answering Brief for review. Submitted by - Parker Drilling Management Services, Inc.. Date of service: 08/30/2016. [10107212] [15-56352] (Vogel, Karin) [Entered: 08/30/2016 04:10 PM]
08/30/2016	21	Submitted (ECF) excerpts of record. Submitted by - Parker

Date Filed	#	Docket Text
		Drilling Management Services, Inc.. Date of service: 08/30/2016. [10107244] [15-56352] (Vogel, Karin) [Entered: 08/30/2016 04:14 PM]
		* * *
10/18/2016	27	Submitted (ECF) Reply Brief for review. Submitted by Appellant Brian Newton. Date of service: 10/18/2016. [10164648] [15-56352]--[COURT UPDATE: Attached corrected brief. 10/19/2016 by SLM] (Strauss, Michael) [Entered: 10/18/2016 06:33 PM]
		* * *
03/07/2017	37	ARGUED AND SUBMITTED TO RICHARD A. PAEZ, MARSHA S. BERZON and MORGAN B. CHRISTEN. [10346820] (DJW) [Entered: 03/07/2017 02:14 PM]
		* * *
02/05/2018	40	FILED OPINION (RICHARD A. PAEZ, MARSHA S. BERZON and MORGAN B. CHRISTEN) VACATED; REMANDED. Judge: MBC Authoring. FILED AND ENTERED JUDGMENT. [10750602]--[Edited: Replaced PDf of opinion (typo corrected).

Date Filed	#	Docket Text
		02/06/2018 by RY] (RMM) [Entered: 02/05/2018 07:12 AM]
* * *		
03/22/2018	45	Filed (ECF) Appellee Parker Drilling Management Services, Ltd. petition for rehearing en banc (from 02/05/2018 opinion). Date of service: 03/22/2018. [10809584] [15-56352] (Holland, Ronald) [Entered: 03/22/2018 05:08 PM]
04/02/2018	46	Submitted (ECF) Amicus brief for review (by government or with consent per FRAP 29(a)). Submitted by Freeport-McMoRan Oil & Gas LLC et al.. Date of service: 04/02/2018. [10821096] [15-56352] (Marwell, Jeremy) [Entered: 04/02/2018 01:59 PM]
* * *		
04/02/2018	49	Submitted (ECF) Amicus brief for review and filed Motion to become amicus curiae. Submitted by Washington Legal Foundation. Date of service: 04/02/2018. [10821522] [15-56352] (Samp, Richard) [Entered: 04/02/2018 03:55 PM]
* * *		

Date Filed	#	Docket Text
04/27/2018	52	Filed Order Amending Opinion (RICHARD A. PAEZ, MARSHA S. BERZON and MORGAN B. CHRISTEN)The Washington Legal Foundation's motion for leave to file brief as amicus curiae in support of Appellee's petition for rehearing en banc is GRANTED. The panel votes to deny the petition for rehearing en banc. The full court has been advised of the petition for rehearing en banc, and no judge requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35. The opinion, filed on February 5, 2018, is amended. On page 40, after the sentence, "We vacate the order dismissing Newton's claims and remand to the district court for further proceedings consistent with this opinion[,]" the following footnote is added: "We reserve for the district court's consideration on remand the question whether our holding should be applied retrospectively. See Huson, 404 U.S. at 355." With the foregoing amendment, the petition for rehearing en banc, filed March 22, 2018, is DENIED. No

Date Filed	#	Docket Text
		further petitions for rehearing will be entertained. [10853020] (RMM) [Entered: 04/27/2018 07:22 AM]
05/03/2018	53	Filed (ECF) Appellee Parker Drilling Management Services, Ltd. Motion to stay the mandate. Date of service: 05/03/2018. [10861412] [15-56352] (Holland, Ronald) [Entered: 05/03/2018 09:15 PM]
05/16/2018	54	Filed order (RICHARD A. PAEZ, MARSHA S. BERZON and MORGAN B. CHRISTEN) Defendant-Appellee's motion to stay the issuance of the mandate is GRANTED. Issuance of the mandate is stayed pending the filing of a petition for a writ of certiorari in the United States Supreme Court. If such a petition is timely filed, the stay shall remain in effect until the petition is denied or, if granted, pending determination of the cause by the United States Supreme Court. [10875333] (OC) [Entered: 05/16/2018 04:42 PM]
		* * *

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

No. 2:15-cv-02517

BRIAN NEWTON,

v.

PARKER DRILLING MANAGEMENT SERVICES, LTD.

RELEVANT DOCKET ENTRIES

Date Filed	#	Docket Text
04/06/2015	1	NOTICE OF REMOVAL from Santa Barbara, case number 1487051 Receipt No: 0973-15496572 - Fee: $400, filed by Defendant Parker Drilling Management Services, Inc.. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Civil Cover Sheet, # 5 Declaration Whitley) (Attorney Ellen M Bronchetti added to party Parker Drilling Management Services, Inc.(pty:dft)) (Bronchetti, Ellen) (Entered: 04/06/2015)
		* * *
06/12/2015	8	NOTICE OF MOTION AND MOTION for Judgment on the Pleadings as to On the

Date Filed	#	Docket Text
		Pleadings Under FRCP 12(C) or Alternatively for Summary Judgment Under RFCP 56 filed by Defendant Parker Drilling Management Services, Inc., Parker Drilling Management Services, Ltd.. Motion set for hearing on 8/17/2015 at 09:00 AM before Judge R. Gary Klausner. (Attachments: # 1 Memorandum Memorandum of Points and Authorities in Support of Motion for Judgment on the Pleadings, # 2 Request for Judicial Notice in Support of Motion for Judgment on the Pleadings, # 3 Exhibit Exhibit 1 to Request for Judicial Notice, # 4 Exhibit Exhibit 2 to Request for Judicial Notice, # 5 Exhibit Exhibit 3 to Request for Judicial Notice, # 6 Exhibit Exhibit 4 to Request for Judicial Notice, # 7 Exhibit Exhibit 5 to Request for Judicial Notice, # 8 Statement of Uncontroverted Facts in Support of Motion for Judgment on the Pleadings, # 9 Declaration Declaration of Steve Maxwell in Support of Motion for Judgment on the Pleadings, # 10 Proposed Order [Proposed] Order Granting

Date Filed	#	Docket Text
		Defendant's Motion for Judgment on the Pleadings)(Attorney Ellen M Bronchetti added to party Parker Drilling Management Services, Inc.(pty:dft)) (Bronchetti, Ellen) (Entered: 06/12/2015)
		* * *
06/29/2015	16	OPPOSITION In Opposition To re: MOTION for Judgment on the Pleadings as to On the Pleadings Under FRCP 12(C) or Alternatively for Summary Judgment Under RFCP 56 8 filed by Plaintiff Brian Newton. (Strauss, Michael) (Entered: 06/29/2015)
		* * *
07/06/2015	18	NOTICE OF MOTION AND MOTION to Certify Class filed by Plaintiff Brian Newton. Motion set for hearing on 8/3/2015 at 09:00 AM before Judge R. Gary Klausner. (Attachments: # 1 Declaration of Michael A Strauss In Support of Motion for Class Certification, # 2 Declaration of Brian Newton In Support of Motion for Class Certification, # 3 Proposed

Date Filed	#	Docket Text
		Order Granting Motion for Class Certification) (Strauss, Michael) (Entered: 07/06/2015)
07/06/2015	19	REPLY In Support Of MOTION for Judgment on the Pleadings as to On the Pleadings Under FRCP 12(C) or Alternatively for Summary Judgment Under RFCP 56 8 filed by Defendant Parker Drilling Management Services, Ltd.. (Bronchetti, Ellen) (Entered: 07/06/2015)
		* * *
07/13/2015	24	to Plaintiff's Motion for Class Certification Yes re: NOTICE OF MOTION AND MOTION to Certify Class 18 Opposition to Class Certification filed by Defendants Parker Drilling Management Services, Inc., Parker Drilling Management Services, Ltd.. (Attachments: # 1 Appendix of Evidence in Support of Defendant's Opposition to Motion for Class Certification, # 2 Declaration of Ellen Bronchetti, # 3 Exhibit A to Bronchetti Declaration, # 4 Exhibit B to Bronchetti Declaration, # 5 Declaration of Joann Hernandez, # 6 Exhibit A to Hernandez Declaration, # 7

Date Filed	#	Docket Text
		Exhibit B to Hernandez Declaration, # 8 Exhibit C to Hernandez Declaration, # 9 Declaration of Steve Wilson, # 10 Exhibit to Wilson Declaration, # 11 Declaration of Dave Pascaloff, # 12 Declaration of Steven Maxwell, # 13 Request for Judicial Notice, # 14 Exhibit A to Request for Judicial Notice, # 15 Proposed Order Granting Request for Judicial Notice, # 16 Objection to Declaration of Brian Newton, # 17 Objection to Plaintiff's Evidence) (Bronchetti, Ellen) (Entered: 07/13/2015)
07/20/2015	25	REPLY In Support Of NOTICE OF MOTION AND MOTION to Certify Class 18 filed by Plaintiff Brian Newton. (Strauss, Michael) (Entered: 07/20/2015)
		* * *
08/10/2015	37	MINUTES (IN CHAMBERS) Order re: Defendant's Motion for Judgment on the Pleadings, or alternatively, for Summary Judgment 8 by Judge R. Gary Klausner. The Court GRANTS Defendant's Motion for Judgment on the Pleadings.

Date Filed	#	Docket Text
		Refer to the Court's order for details. MD JS-6. Case Terminated. (pso) (Entered: 08/10/2015)
09/03/2015	38	NOTICE OF APPEAL to the 9th CCA filed by Plaintiff Brian Newton. Appeal of Order on Motion for Judgment on the Pleadings, 37 (Appeal fee of $505 receipt number 0973-16381909 paid.) (Strauss, Michael) (Entered: 09/03/2015)
09/03/2015	39	NOTIFICATION by Circuit Court of Appellate Docket Number 15-56352, 9th Circuit regarding Notice of Appeal to 9th Circuit Court of Appeals 38 as to plaintiff Brian Newton. (mat) (Entered: 09/04/2015)
02/05/2018	40	OPINION from Ninth Circuit Court of Appeals filed re: Notice of Appeal to 9th Circuit Court of Appeals 38 filed by Brian Newton. CCA # 15-56352. We vacate the order dismissing Newton's claims and remand to the district court for further proceedings consistent with this opinion. VACATED and REMANDED. (bp) (Entered: 02/07/2018)

Date Filed	#	Docket Text
02/05/2018	41	ORDER from Ninth Circuit Court of Appeals filed re: Notice of Appeal to 9th Circuit Court of Appeals 38 filed by Brian Newton. CCA # 15-56352. At the direction of the Court, costs are hereby taxed against appellee. (bp) (Entered: 02/07/2018)
02/12/2018	42	ORDER from Ninth Circuit Court of Appeals filed re: Notice of Appeal to 9th Circuit Court of Appeals 38 filed by Brian Newton. CCA # 15-56352. Defendant-Appellee's unopposed motion for an extension of time to file a petition for rehearing en banc is granted.(mat) (Entered: 02/14/2018)
04/27/2018	43	ORDER from Ninth Circuit Court of Appeals filed re: Notice of Appeal to 9th Circuit Court of Appeals 38 filed by Brian Newton. CCA # 15-56352. The Washington Legal Foundation's motion for leave to file brief as amicus curiae in support of Appellee's petition for rehearing en banc is GRANTED. The opinion, filed on February 5, 2018, is amended. [See complete

Date Filed	#	Docket Text
		document for all details.] (mat) (Entered: 04/27/2018)
05/16/2018	44	ORDER from Ninth Circuit Court of Appeals filed re: Notice of Appeal to 9th Circuit Court of Appeals 38 filed by Brian Newton. CCA # 15-56352. Defendant-Appellee's motion to stay the issuance of the mandate is GRANTED. Issuance of the mandate is stayed pending the filing of a petition for a writ of certiorari in the United States Supreme Court. If such a petition is timely filed, the stay shall remain in effect until the petition is denied or, if granted, pending determination of the cause by the United States Supreme Court. (car) (Entered: 05/17/2018)
		* * *

First Amended Complaint (filed Mar. 23, 2015)

TO ALL INTERESTED PARTIES HEREIN AND TO THEIR ATTORNEYS OF RECORD:

COME NOW, PLAINTIFF Brian Newton ("Plaintiff") and the putative class, and submit the following Complaint against PARKER DRILLING MANAGEMENT SERVICES, INC. and DOES 1 through 100, inclusive (collectively "Defendants"), and each of them as follows:

1. At all times herein mentioned, Plaintiff Brian Newton was an employee of Defendants, working in the state of California, within the last four (4) years.

2. Unless otherwise stated, at all times herein mentioned Plaintiff was an individual residing in the County of Ventura, State of California. Plaintiff became a resident of Harris County, Texas in or about November 2014.

3. At all times herein mentioned, Plaintiff is informed and believes and, based on such information and belief, thereon alleges that Parker Drilling Management Services, Inc., is a Nevada Corporation that does business in the County of Santa Barbara, California.

4. The true names and capacities, whether individual, corporate, associate, representative or otherwise, of the defendants identified herein as Does 1 through 100, inclusive, are unknown to Plaintiff, who therefore sue these defendants by said fictitious names. Plaintiff will amend this Complaint to allege the true names and capacities of Does 1 through 100 when they have been ascertained. Does 1 through 100

are in some manner legally responsible for the wrongs and injuries alleged herein.

5. Each of the Defendants acted as the agent or employee of the others and each acted within the scope of that agency or employment.

6. Venue is appropriate in Santa Barbara County Superior Court because the unlawful employment practices complained of herein occurred in the City of Goleta, California, County of Santa Barbara, and in the offshore waters in the Santa Barbara Channel.

CLASS ACTION ALLEGATIONS

7. Plaintiff brings the first three causes of action stated herein on his own behalf and on behalf of all persons similarly situated. The class consists of all hourly employees of Parker Drilling Management Services, Inc., who, at any time within four years from the date of filing of this lawsuit, worked on oil platforms off of the California coast for periods of 24 hours or more (hereinafter the "Putative Class"). The Putative Class represents over 25 persons and is so numerous that the joinder of each member of the putative class is impracticable.

8. There is a well-defined community of interest in the questions of law and fact affecting the classes Plaintiff represents. The Putative Class members' claims against Defendants involve questions of common or general interest, in that each was employed by Defendants, and each was not paid wages owed based on the same failure to compensate for all hours during which they were subject to the control of Defendants, including hours in excess of their scheduled shifts and during meal periods. These questions are such that proof of a state of facts

common to the members of the Putative Class will entitle each member to the relief requested in this complaint.

9. The members of the Putative Class that Plaintiff represents have no plain, speedy or adequate remedy at law against Defendants, other than by maintenance of this class action, because Plaintiff is informed and believes, and on such information and belief alleges, that the damage to each member of the Putative Class is relatively small and that it would be economically infeasible to seek recovery against Defendants other than by a class action.

10. Plaintiff will fairly and adequately represent the interest of the Putative Class, because Plaintiff is a member of the Putative Class, and Plaintiff's claims are typical of those in the Putative Class'.

11. Plaintiff was employed by Defendants from approximately January 25, 2013 to approximately January 15, 2015.

12. Plaintiff worked on an oil platform off of the California coastal waters. His shift typically lasted 14 days. He received pay for only 12 hours each day while on the oil platform. He did not receive any compensation for 12 hours while on the platform each day. He could not reasonably leave the platform during his 14-day shift.

FIRST CAUSE OF ACTION

Minimum Wage Violations

(Action Brought By Plaintiff On Behalf Of Himself And The Putative Class Against All Defendants)

13. Plaintiff incorporates by reference and re-alleges each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

14. California law requires payment of at least the state-mandated minimum wage for all hours worked by non-exempt employees. (See Lab. Code, §§ 1194, 1197.) Hourly wages cannot be averaged out to cover hours worked during which no compensation was paid. (See *Armenta v. Osmose* (2005) 135 Cal.App.4th 314, 322-24.) Time during which a worker cannot leave his or her worksite, even sleeping time, is considered hours worked under California law. (*Mendiola v. CPS Security Solutions, Inc.* (Cal., Jan. 8, 2015) 15 Cal. Daily Op. Serv. 203.)

15. Plaintiff and the Putative Class regularly worked hours for which they were not paid the minimum wage. Defendants' minimum wage violations include, but are not limited to, the failure to pay any wages whatsoever to Plaintiff and the Putative Class for 12 hours each workday.

16. Plaintiff seeks such minimum wages owed to them for the three-year period measured backward from the date of the filing of the initial Complaint in this matter.

17. The exact amount of minimum wages owed will not be fully ascertained until discovery is

completed. Until Defendants produce the necessary documents for an accounting, Plaintiff is unable to determine the exact amount of minimum wages owed.

18. Labor Code section 218.6 states, "[I]n any action brought for the nonpayment of wages, the court shall award interest on all due and unpaid wages at the rate of interest specified in subdivision (b) of Section 3289 of the Civil Code, which shall accrue from the date that the wages were due and payable as provided in Part 1 (commencing with Section 200) of Division 2." Plaintiff seeks such interest on all minimum wages owed to them for the three-year period measured backward from the date of the filing of the initial Complaint in this matter.

19. Plaintiff seeks liquidated damages in an amount equal to the minimum wages due to him and the Putative Class under Labor Code section 1194.2.

20. Pursuant to Labor Code section 1194, Plaintiff requests the Court to award Plaintiff's reasonable attorney's fees and costs incurred in this action.

WHEREFORE, Plaintiff and the Putative Class demand judgment against Defendants, and each of them, as follows:

1. For minimum wages owed according to proof;

2. For prejudgment interest pursuant to Labor Code section 218.6 and Civil Code sections 3288 and 3291 on all amounts claimed;

3. For liquidated damages in an amount equal to the unpaid minimum wages owed under Labor Code section 1194.2;

4. For attorney's fees and costs pursuant to Labor Code section 1194;

5. For costs of suit; and

6. For any other and further relief that the Court considers just and proper.

SECOND CAUSE OF ACTION

Pay Stub Violations

(Action Brought By Plaintiff On Behalf Of Himself And The Putative Class Against All Defendants)

27. Plaintiff incorporates by reference and re-alleges each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

28. California Labor Code section 226 provides:

> Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages arc paid by personal check or cash, an itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided, that all deductions made on written orders of the employee may be aggregated and shown as

> one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

29. In this case, Defendants have failed to provide such wage deduction statements to Plaintiff and the Putative Class in that their wage deduction statements do not include, without limitation, their gross wages earned, all hours worked, net wages earned, or all applicable hourly rates in effect during the pay period, the corresponding number of hours worked at each hourly rate by the employee, and the name and address of the legal entity that is the employer. Pursuant to Labor Code section 226(e), damages arc appropriate. At this time, Plaintiff believes and alleges that he and the Putative Class are owed the maximum allowable penalty under section 226(e) because Defendants failed to provide adequate paycheck stubs. However, the exact amount of damages under Labor Code section 226(e) will not be fully ascertained until discovery is completed. Until Defendants produce the necessary documents for an accounting, Plaintiff is unable to determine the exact amount of damages under Labor Code section 226(e).

30. Pursuant to Labor Code section 226(e), Plaintiff requests the court to award Plaintiff's

reasonable attorney's fees and costs incurred by Plaintiff in this action.

WHEREFORE, Plaintiff and the Putative Class demand judgment against Defendants, and each of them, as follows:

1. For statutory penalties, pursuant to law;

2. For reasonable attorneys' fees pursuant Labor Code section 226;

3. For costs of suit; and

4. For any other and further relief that the Court considers just and proper.

THIRD CAUSE OF ACTION

Unfair Competition

(Action Brought By Plaintiff On Behalf Of Himself And The Putative Class Against All Defendants)

31. Plaintiff incorporates by reference and re-alleges each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as though fully set forth herein.

32. This cause of action is being brought pursuant to California Business and Professions Code section 17200 et seq. and California case law including *Cortez v. Purolator Air Filtration Products Co.* (2000) 23 Cal.App.4th 163.

33. It is alleged that Defendants have willfully failed to pay Plaintiff and the Putative Class, the state-mandated minimum, overtime, doubletime, and meal period premium wages for all hours worked. The failure to pay such wages constitutes an unfair

business practice under California Business and Professions Code section 17200.

34. As a result of the conduct of Defendants, Defendants profited from breaking the law. Plaintiff and the Putative Class seek disgorgement of this unlawfully obtained benefit (plus interest thereon) for the four-year period measured backward from the date of filing of the initial Complaint in this matter.

35. California Business and Professions Code section 17203, under the authority of which a restitutionary order may be made, provides:

> Any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use of employment by any person or any practice which constitutes unfair competition, as defined in this chapter, or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition. Any person may pursue representative claims or relief on behalf of others only if the claimant meets the standing requirements of Section 17204 and complies with Section 282 of the Code of Civil Procedure, but these limitations do not apply to claims brought under his chapter by the Attorney General, or any district attorney, county counsel, city attorney, or city prosecutor in this state.

36. As a result of the alleged aforesaid actions, Plaintiff and the Putative Class have suffered injury in fact and have lost money as a result of such unfair competition.

37. In this case, it is requested that this Court order such restitution.

WHEREFORE, Plaintiff and the Putative Class demand judgment against Defendants, and each of them, as follows:

1. For an equitable order, ordering Defendants to pay all Putative Class members all wages, interest, and penalties they are owed;

2. For an appointment of a receiver to perform an accounting of all monies owed to these employees;

3. For any and all injunctive relief this Court deems necessary pursuant to Business and Professions Code section 17203;

4. For attorneys' fees and costs;

5. For prejudgment interest on all amounts owed pursuant to Civil Code sections 3288 and 3291; and

6. For any other and further relief that the Court considers proper.

FOURTH CAUSE OF ACTION

Failure To Timely Pay Wages At Termination

(Action Brought By Plaintiff On Behalf Of Himself And The Putative Class Against All Defendants)

38. Plaintiff incorporates by reference and re-alleges each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

39. Labor Code section 201 provides, "If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." Defendants did not pay immediately all wages earned and unpaid to Plaintiff and the Putative Class upon discharge. Defendants have refused and continue to refuse to pay said wages.

40. Pursuant to Labor Code section 203, Defendants have willfully failed to pay without abatement or reduction, in accordance with Labor Code sections 201 and 202 all of the minimum, overtime, meal period, and doubletime wages of the Plaintiff and the Putative Class, as herein alleged. Defendants are aware that they owe the wages claimed by Plaintiff and the Putative Class, yet Defendants willfully failed to make payment. As a result, Plaintiff seeks wages and waiting-time penalties pursuant to Labor Code section 203 on behalf of himself and the Putative Class. These penalties consist of up to 30 days of pay for Plaintiff Putative Class at their regular rates of pay.

41. Plaintiff and the Putative Class have been available and ready to receive wages owed to them.

42. Plaintiff and the Putative Class have never refused to receive any payment, nor have they been absent from their regular places of residence.

43. Defendants' failure to pay wages due and owing Plaintiff and the Putative Class, as indicated in prior paragraphs, was willful; Defendants have knowingly refused to pay any portion of the amount due and owning Plaintiff and the Putative Class.

WHEREFORE, Plaintiff and the Putative Class demand judgment against Defendants, and each of them, as follows:

1. For waiting-time penalties under Labor Code section 203;

2. For costs of suit; and

3. For any other and further relief that the Court considers just and proper,

FIFTH CAUSE OF ACTION

Failure To Provide Lawful Meal Periods

(Action Brought By Plaintiff On Behalf Of Himself And The Putative Class Against All Defendants)

46. Plaintiff incorporates by reference and re-alleges each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

47. California law provides that no employer shall employ any person for a work period of more than five hours without a meal period of not less than 30 minutes. (Lab. Code §§ 226.7, 512.)

48. If an employer fails to provide an employee a legally mandated meal period, the employer sha!l pay the employee one hour of pay at the employee's regular rate of compensation for each five hours of work that the meal period is not provided.

49. Defendants have intentionally and improperly denied meal periods to Plaintiff and the Putative Class in violation of Labor Code sections 226.7 and 512.

50. At all times relevant hereto, Plaintiff and the other members of the Putative Class have worked

more than five hours in a workday (and often more than ten, fifteen hours, and twenty hours). At all relevant times hereto, Defendants have failed to provide meal periods for every five-hour work period as required by California law.

51. Plaintiff and the other members of the Putative Class are informed and believe, and based upon that information and belief allege, that Defendants know or should have known that Plaintiff and the Putative Class were entitled to meal periods but purposely elected not to provide these mandated periods.

52. Plaintiff seeks meal period premium wages owed to them for the three-year period measured backward from the date of the filing of the initial Complaint in this matter.

53. The exact amount of meal period premium wages owed will not be fully ascertained until discovery is completed. Until Defendants produce the necessary documents for an accounting, Plaintiff is unable to determine the exact amount of meal period premium wages owed.

21. Labor Code section 218.6 states, "[I]n any action brought for the nonpayment of wages, the court shall award interest on all due and unpaid wages at the rate of interest specified in subdivision (b) of Section 3289 of the Civil Code, which shall accrue from the date that the wages were due and payable as provided in Part 1 (commencing with Section 200) of Division 2." Plaintiff seeks such interest on all meal period premium wages owed to them for the three-year period measured backward from the date of the filing of the initial Complaint in this matter.

WHEREFORE, Plaintiff and the Putative Class demand judgment against Defendants, and each of them, as follows:

1. For meal period premiums in an amount according to proof;

2. For costs of suit; and

3. For any other and further relief that the Court considers just and proper.

SIXTH CAUSE OF ACTION

Failure To Pay Overtime And Doubletime Premium Wages

(Action Brought By Plaintiff On Behalf Of Himself And The Putative Class Against All Defendants)

58. Plaintiff incorporates by reference and re-alleges each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

59. California law requires payment of overtime premium pay for all hours worked by non-exempt employees in excess of eight in one day or 40 hours in one week and for the first eight hours on the seventh-straight day of work in one workweek. (Lab. Code, § 510.) It further requires payment of doubletime premium pay for all hours worked by non-exempt employees in excess of twelve hours in one day or in excess of eight hours on the seventh-straight day of work in a single workweek. (*Ibid.*)

60. Time during which a worker cannot leave his or her worksite, even sleeping time, is considered hours worked under California law. (*Mendiola v. CPS*

Security Solutions, Inc. (Cal., Jan. 8, 2015) 15 Cal. Daily Op. Serv. 203.)

61. Plaintiff and the Putative Class regularly worked hours for which they were not paid the overtime or doubletime premium wages. Defendants' overtime and doubletime wage violations include, but are not limited to, the failure to pay any wages whatsoever to Plaintiff and the Putative Class for 12 hours each workday, which time lawfully was considered overtime and/or doubletime hours worked.

62. Plaintiff and the Putative Class seek such overtime and doubletime premium wages owed to them for the three-year period measured backward from the date of the filing of the initial Complaint in this matter.

63. The exact amount of overtime and doubletime premium wages owed will not be fully ascertained until discovery is completed. Until Defendants produce the necessary documents for an accounting, Plaintiff is unable to determine the exact amount of overtime and doubletime premium wages owed.

64. Labor Code section 218.6 states, "[I]n any action brought for the nonpayment of wages, the court shall award interest on all due and unpaid wages at the rate of interest specified in subdivision (b) of Section 3289 of the Civil Code, which shall accrue from the date that the wages were due and payable as provided in Part 1 (commencing with Section 200) of Division 2." Plaintiff seeks such interest on all overtime and doubletime premium wages owed to them for the three-year period measured backward from the date of the filing of the initial Complaint in this matter.

65. Pursuant to Labor Code section 1194, Plaintiff requests the Court to award Plaintiffs reasonable attorney's fees and costs incurred in this action.

WHEREFORE, Plaintiff and the Putative Class demand judgment against Defendants, and each of them, as follows:

1. For overtime and doubletime premium wages owed according to proof;

2. For prejudgment interest pursuant to Labor Code section 218.6 and Civil Code sections 3288 and 3291 on all amounts claimed;

3. For attorney's fees and costs pursuant to Labor Code section 1194;

4. For costs of suit; and

5. For any other and further relief that the Court considers just and proper.

SEVENTH CAUSE OF ACTION

Civil Penalties Under The Private Attorneys General Act Of 2004

(Action Brought By Plaintiff On Behalf Of Himself And The Putative Class Against All Defendants)

58. Plaintiff refers to paragraphs 1 through 57, and incorporates same by reference as though fully set forth at length.

59. It is alleged that Defendants intentionally denied Plaintiff and his similarly situated co-workers wages that should have been paid and have violated Labor Code provisions.

60. Pursuant to Labor Code sections 2698 et seq., Plaintiff is entitled to recover civil penalties on behalf

of himself and other persons who are or were employed by the alleged violator and against whom one or more of the alleged violations was committed. Plaintiff is therefore pursuing civil penalties for violations of the Labor Code sections set forth herein.

61. One or more of the alleged violations set forth herein was committed against Plaintiff, and Plaintiff is therefore an "aggrieved employee" under Labor Code Section 2699(c), which provides in relevant part, "(c) For purposes of this part, "aggrieved employee" means any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed."

62. Labor Code section 200 defines "wages" as including all amounts for labor performed by employers of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation.

63. Labor Code section 201 requires immediate payment of all wages owed at the termination of employment. It is alleged that within the last year, Defendants' employees in California have been terminated and have not received all wages owed at their termination. There is no civil penalty associated with violation of section 201, but Plaintiff seeks civil penalties on behalf of himself and all others similarly situated under Labor Code section 2699, subd. (f).

64. Labor Code section 202 requires payment of all wages owed within 72 hours of the resignation of an employee, unless the employee gives more than 72-hours notice, in which case wages are owed at the employee's resignation. It is alleged that within the

last year, Defendants' employees in California have resigned and have not received all overtime premium pay owed in a timely fashion after their resignation. There is no civil penalty associated with violation of section 202, but Plaintiff seeks civil penalties on behalf of himself and all others similarly situated tinder Labor Code section 2699, subd. (f).

65. Labor Code section 204 makes wages due no less frequently than twice a month for non-exempt employees for work performed each pay period. Defendants have violated section 204 with respect to Plaintiff and his similarly situated coworkers by not paying them all wages due for work performed each pay period. Plaintiff seeks civil penalties on behalf of himself and all other similarly situated under Labor Code section 210.

66. Labor Code section 219 provides that an employer may not circumvent by way of private agreement the requirements of the wage-and-hour laws of the Labor Code. To the extent that Defendants will argue that these employees agreed to forfeit their travel time and/or other wages, Defendants will have violated Labor Code section 219. There is no civil penalty associated with violation of section 219, but Plaintiff seeks civil penalties on behalf of himself and all others similarly situated under Labor Code section 2699, subd. (f).

67. Labor Code section 226, subdivision (a), requires a California employer to include very specific information on an employee's paycheck stub. The required information includes the total number of overtime hours worked and the correct rates of pay. Lab. Code § 226(a). Subdivision (e) sets forth statutory

penalties for the violation of section 226(a). Plaintiff seeks to recover said penalties on behalf of himself and all others similarly situated.

68. Labor Code section 226.3 sets forth civil penalties for violation of section 226, subdivision (a). Plaintiff seeks said penalties against Defendants on behalf of himself and all other similarly situated employees for violation of section 226, subdivision (a).

69. Labor Code section 226.7 provides that an employer must compensate a non-exempt employee with one hour of pay for each required meal period that it does not provide. Defendants violated this statute by not paying this meal period premium pay to Plaintiff and his co-workers when they were not provided with 30-minute, off-duty meal periods.

70. Labor Code section 510 provides that an employer shall pay overtime premium wages to non-exempt employees who work over eight hours in a workday or over 40 hours in a workweek. Defendants violated Labor Code section 510 by not paying overtime premium wages to non-exempt employees who worked over eight hours in a day and Labor Code section 510.

71. Labor Code section 512 provides that an employer shall provide its non-exempt employees with one off-duty meal period for each five-hour work period. Defendants violated Labor Code section 512 by not providing off-duty meal periods to its non-exempt employees for every five-hour work period.

72. Labor Code section 558 provides for civil penalties against an employer who violates sections 510 and 512. Plaintiff seeks said penalties against Defendants on behalf of himself and all other similarly

situated employees for violation of sections 510 and 512.

73. Labor Code section 1197 requires that employers may not pay less than the mandated minimum wage. Defendants violated section 1197 by not paying Plaintiff and his similarly situated coworkers at least the minimum wage for all hours worked. The civil penalty for violations of section 1197 is enumerated in Labor Code section 1197.1. Plaintiff seeks said penalties against Defendants on behalf of himself and all other similarly situated employees for violations of section 1197.

74. Plaintiff also seeks any civil penalties allowable under the Labor Code that arise out of the same set of operative facts as the claims made in this complaint.

75. Plaintiff has fully complied with the statutory requirements of Labor Code section 2699.3. Plaintiff gave notice by a letter dated January 28, 2015 and delivered by certified mail to the California Labor and Workforce Development Agency and the employer of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. On March 6, 2015, Plaintiff received notice dated March 2, 2015 from the Labor and Workforce Development Agency indicating its intent not to pursue an investigation or action for penalties against Defendants.

76. Defendants' failure to pay wages due and owing to Plaintiff and those similarly situated, as indicated in prior paragraphs, was willful. Defendants have knowingly refused to pay any portion of the amount due and owing Plaintiff and his similarly

situated employees. Further, Defendants have not taken any actions to "cure" the Labor Code violations pursuant to California Labor Code section 2699 et seq.

77. By failing to pay Plaintiff and the current and past aggrieved employees, Defendants have violated numerous California Labor Code provisions, all as set forth hereinabove. Civil penalties are therefore appropriate.

WHEREFORE, Plaintiff demands judgment against Defendants, and each of them, as follows:

1. For civil penalties for each aggrieved employee, for each violation alleged aforesaid, to be distributed in accordance with Labor Code section 2699;

2. For attorneys' fees and costs pursuant to Labor Code section 2699(g);

3. For any other and further relief that the Court considers just and proper.

DATED: March 6, 2015 PALAY LAW FIRM, APC

By: [handwritten: signature]
Michael A. Strauss
Andrew C. Ellison
Attorneys for Plaintiff

Answer to Plaintiff's First Amended Complaint (filed Apr. 3, 2015)

TO PLAINTIFF AND HIS COUNSEL OF RECORD:

Defendant Parker Drilling Management Services, Ltd. ("Defendant"), erroneously sued as "Parker Drilling Management Services, Inc.," for itself alone and for no others, hereby answers the First Amended Complaint of Plaintiff Brian Newton ("Plaintiff") as follows:

PROCEDURAL HISTORY

On March 6, 2015, Defendant was served with a Complaint in this matter that was filed with the Court on February 17, 2015. The Complaint erroneously names "Parker Drilling Management Services, Inc.," rather than the correct name of the company: Parker Drilling Management Services, Ltd. The original Complaint contained five causes of action. On March 26, 2015, Defendant was served with Plaintiffs First Amended Complaint ("FAC"), which was filed with the Court on March 23, 2015, and added two new causes of action to the original five. As it would now appear unnecessary Lo answer Plaintiff's original Complaint, Defendant hereby answers the FAC.

GENERAL DENIAL

Pursuant to the provisions of Section 431.30(d) of the California Code of Civil Procedure, Defendant denies, generally and specifically, each and every allegation, statement, and matter, and each purported cause of action contained in Plaintiff's FAC, and, without limiting the generality of the foregoing,

further denies that Plaintiff was damaged in any way at all by reason of any ads or omissions of Defendant.

AFFIRMATIVE DEFENSES

In further answer to Plaintiff's unverified FAC, Defendant alleges the following additional defenses. In asserting these defenses, Defendant does not assume the burden of proof as to matters that, pursuant to law, are Plaintiff's burden to prove.

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Cause of Action)

1. The FAC, and each and every purported cause of action alleged therein, fails to state facts sufficient to constitute a cause of action upon which relief can be granted against Defendant.

SECOND AFFIRMATIVE DEFENSE

(Failure to Exhaust)

2. Defendant is informed and believes, and based upon such information and belier alleges, that the FAC, and each and every purported cause of action alleged therein, is barred, in whole or in part, because Plaintiff failed to timely and completely exhaust their requisite administrative and/or contractual remedies available to them under the California Labor Code or other provisions or law prior to commencing this action.

THIRD AFFIRMATIVE DEFENSE

(Federal Preemption)

3. Defendant alleges that, to the extent Plaintiff's claims involve conduct that is, or seeks remedies that are, governed or regulated by federal law, such claims arc preempted.

FOURTH AFFIRMATIVE DEFENSE

(Preemption – Supremacy Clause)

4. Defendant asserts that the Supremacy Clause of the United States Constitution bars Plaintiff's claims. *Lorrilard Tobacco Co. v. Reilly* (2001) 533 U.S. 525.

FIFTH AFFIRMATIVE DEFENSE

(Non-Certifiable Class)

5. Plaintiff cannot satisfy the requirements of California Code of Civil Procedure Section 382 because individual questions of fact and law predominate over common questions. Plaintiff's claims are not typical of those belonging to the putative class members, the class is not sufficiently numerous, and/or other class requirements cannot be satisfied. Accordingly, this action is not properly brought as a class action.

SIXTH AFFIRMATIVE DEFENSE

(Inadequacy of Class Representative)

6. Defendant is informed and believes, and based upon such information and belief alleges, that Plaintiff is not a proper representative of the class he purports to represent and. accordingly, this action is not properly brought as a class action.

SEVENTH AFFIRMATIVE DEFENSE

(Lack of Superiority)

7. Defendant is informed and believes, and based upon such information and belief alleges, that the class action procedure is not the superior method for adjudicating Plaintiff's claims or the claims of the alleged class and, accordingly, this action is not properly brought as a class action.

EIGHTH AFFIRMATIVE DEFENSE

(Lack of Standing)

8. Defendant is informed and believes, and based upon such information and belief alleges, that Plaintiff lacks standing to assert any purported cause of action alleged in the FAC and lacks standing lo represent the putative class.

NINTH AFFIRMATIVE DEFENSE

(Statute of Limitations)

9. The FAC, and each and every purported cause of action alleged therein, is barred by the applicable statutes of limitations, including but not limited to, California Labor Code Section 203; California Code of Civil Procedure Sections 337, 338, 339, 340 and 343; and California Business & Professions Code Section 17208.

TENTH AFFIRMATIVE DEFENSE:

(Laches)

10. Defendant is informed and believes, and based upon such information and belief alleges, that the FAC, and each and every purported cause or action alleged therein, is barred by the doctrine of laches, in that Plaintiff unreasonably delayed in bringing the action because he did not act within a reasonable time in seeking the wages at issue, or otherwise reporting any alleged violation of wage and hour laws, and has unreasonably delayed in the filing of this lawsuit, causing Defendant to suffer prejudice.

ELEVENTH AFFIRMATIVE DEFENSE

(Unclean Hands)

11. Defendant is informed and believes that a reasonable opportunity for investigation and discovery will reveal, and on that basis alleges, the FAC and each cause of action set forth therein are barred by the doctrine of unclean hands.

TWELFTH AFFIRMATIVE DEFENSE

(Waiver)

12. Defendant is informed and believes that a reasonable opportunity for investigation and discovery will reveal, and on that basis alleges, the FAC and each cause of action set forth therein are barred by the doctrine of waiver.

THIRTEENTH AFFIRMATIVE DEFENSE

(Estoppel)

13. Defendant is informed and believes that a reasonable opportunity for investigation and discovery will reveal, and on that basis alleges, the FAC and each cause of action set forth therein are barred by the doctrine or estoppel.

FOURTEENTH AFFIRMATIVE DEFENSE

(Justification)

14. Any acts alleged to have been committed by Defendant were committed in the exercise of good faith, with probable cause, were not arbitrary or capricious, were based upon legitimate factors, and were reasonable and justified under the circumstances.

FIFTEENTH AFFIRMATIVE DEFENSE

(Adequate Remedy at Law)

15. Defendant alleges Plaintiff and/or the putative class members are not entitled to equitable relief insofar as they have adequate remedies at law.

SIXTEENTH AFFIRMATIVE DEFENSE

(Set-Off/Offset/Recoupment)

16. The FAC, and each and every purported cause of action alleged therein, is subject to setoff, offset and/or recoupment to the extent Plaintiff has already been compensated for the hours worked for which he seeks compensation here.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Labor Code § 203 – No Willful or Intentional Violation)

17. Defendant alleges that, even assuming *arguendo* Plaintiff and/or the putative class members are entitled to any additional compensation, it has not willfully or intentionally failed to pay any such additional compensation to Plaintiff and/or the putative class members, within the meaning and scope of California Labor Code section 203.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Bona fide Dispute)

18. Defendant alleges there exists a *bona fide* dispute as to whether any further compensation is actually due to Plaintiff and/or the putative class members and, if so, the amount thereof.

NINETEENTH AFFIRMATIVE DEFENSE

(Labor Code§ 226 – No Intentional Failure)

19. Defendant alleges that, even assuming arguendo Plaintiff and/or the putative class members were not provided with a proper itemized statement of wages and deductions, Plaintiff and the putative c lass members are not entitled to recover damages or penalties because Defendant's alleged failure to comply with California Labor Code section 226(a) was not a "knowing and intentional failure" under California Labor Code section 226(c).

TWENTIETH AFFIRMATIVE DEFENSE

(Lack of Specificity)

20. Defendant alleges Plaintiff has failed to allege special damages with requisite specificity.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(Res Judicata, Bar and Merger, Settlement/Release)

21. The causes of action set forth in the FAC and in each of the purported causes of action alleged therein arc subject to settlement/release agreements, which constitute a complete or partial bar to the present action, and/or the doctrine of res judicata.

TWENTY-SECOND AFFIRMATIVE DEFENSE

(Collateral Estoppel)

22. The FAC, and each and every purported cause of action alleged therein, is barred, in whole or in part by the doctrine or collateral estoppel.

TWENTY-THIRD AFFIRMATIVE DEFENSE

(Civil Penalties Unconstitutional – Due Process and Separation of Powers)

23. The penalties sought in Plaintiff's FAC violate the Due Process and Separation of Powers Clauses of the United States and California Constitutions. *Lockyer v. R.J. Reynolds Tobacco Co.*, 37 Cal. 4th 707 (2005); *Rainer v. Chemical Bank New York Trust Co.*, 54 F.R.D. 412 (S.D.N.Y. 1972).

TWENTY-FOURTH AFFIRMATIVE DEFENSE

(After-Acquired Evidence)

24. Defendant is informed and believes, and based upon such information and belief alleges, that Plaintiff is barred, in whole or in part, from recovery or any damages based upon the doctrine of after-acquired evidence.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

(Uncertainty)

25. Defendant alleges the FAC, and the claims asserted therein, are uncertain.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

(Mitigation of Damages)

26. Defendant is informed and believes that, Plaintiff, and any purported class members, have failed to exercise reasonable care to mitigate their damages, if any were suffered, and that their right to recover against Defendant should be reduced and/or eliminated by such a failure.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

(Violation or Due Process)

27. Defendant alleges that certification of a class, and the prosecution of a representative action on behalf of the general public under California Business and Professions Code section 17200 *et seq.*, as applied to the facts and circumstances of this case, would constitute a denial or Defendant's due process rights, both substantive and procedural, in violation of the Fourteenth Amendment to the United States Constitution and the California Constitution.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

(Breach of Duty)

28. Defendant is informed and believes that a reasonable opportunity for investigation and discovery will reveal and, on that basis, alleges Plaintiff's claims, and those or any putative class members, are barred by their own breach of the duties owed to Defendant under California Labor Code section 2854, 2856, 2857, 2858 and/or 2859.

TWENTY-NINTH AFFIRMATIVE DEFENSE

(No Penalties – Good Faith Dispute)

29. Defendant is informed and believes that further investigation and discovery will reveal, and on that basis alleges, that any violation of the Labor Code or an Order or the Industrial Welfare Commission was an act or omission made in good faith and Defendant had reasonable grounds for believing that its wage payment practices complied with applicable laws and that any such act or omission was not a violation of the Labor Code, the common law or any Order of the Industrial Welfare Commission such that Plaintiff

and/or the putative class members are not entitled to any penalties or damages in excess or any wages/overtime which might be found to be due. Specifically, Plaintiff cannot recover Labor Code Section 203 or Labor Code Section 226(e) civil penalties because any alleged failure to pay wages or provide compliant wage statements was based on a good faith dispute regarding the applicable law or facts.

THIRTIETH AFFIRMATIVE DEFENSE

(Failure to State a Claim for Attorneys' Fees and Costs)

30. Defendant alleges that the FAC fails to state a claim for attorneys' fees under Labor Code section 226. Code of Civil Procedure 1021.5, Business and Professions Code section 17200, *et seq.*, or any other basis.

THIRTY-FIRST AFFIRMATIVE DEFENSE

(Unconstitutional Wage Order)

31. Defendant alleges that the FAC and each cause or action therein, or some of them, arc barred because the applicable wage orders of the Industrial Welfare Commission arc unconstitutionally vague and ambiguous and may violate Defendant's rights under the United States Constitution and the California Constitution as to, among other things, due process or law.

THIRTY-SECOND AFFIRMATIVE DEFENSE

(Failure by Plaintiffs to Follow Directions)

32. Defendant alleges that it is informed and believes that a reasonable opportunity for

investigation and discovery will reveal, and on that basis alleges, that any failure to comply with Defendant's work-time recording and overtime polices and requirements, was the result or failure by Plaintiff and/or the putative class members to follow Defendant's reasonable instructions.

THIRTY-THIRD AFFIRMATIVE DEFENSE

(No Harm Suffered)

33. Defendant is informed and believes that further investigation and discovery will reveal, and on that basis alleges, that Plaintiff has not suffered and will not suffer irreparable harm or any harm as a result of any of the alleged conduct of Defendant.

RESERVATION OF RIGHT TO AMEND ANSWER

Defendant hereby gives notice that they intend to rely on such other and further defenses as may become available during discovery in this action and reserve the right to amend the Answer to assert any such defenses.

PRAYER

WHEREFORE, Defendant prays for judgment as follows:

1. That the FAC be dismissed with prejudice in its entirety;

2. That Plaintiff takes nothing by reason of the FAC;

3. That Defendant be awarded its costs of suit and reasonable attorneys' fees to the extent provided by law; and,

4. For such other and further relief as the Court may deem just and proper.

Dated: April 3, 2014

SHEPPARD, MULLIN, RICHTER & HAPTON LLP

By [handwritten: signature]
Ronald J. Holland
Ellen M. Bronchetti
Matthew C. Lewis
Attorneys for Defendant